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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 KENNETH S. SYLVESTER, et al.

9 Plaintiffs,

10 v.

11 MERCHANTS CREDIT  
12 CORPORATION,

Defendant.

C17-168 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable  
14 Thomas S. Zilly, United States District Judge:

15 (1) Plaintiffs Kenneth and Lisa Sylvester (“plaintiffs”) seek an order enforcing  
16 a settlement agreement in this matter. See Motion to Enforce Settlement Agreement,  
17 docket no. 36. The motion is not opposed. Having considered plaintiffs’ brief filed in  
18 support of the motion, the Court **DENIES** the motion to enforce settlement agreement,  
19 docket no. 36.

20 Trial courts may “summarily enforce . . . a settlement agreement entered  
21 into by the litigants” while the litigation is pending. *In re City Equities Anaheim,*  
22 *Ltd.*, 22 F.3d 954, 957 (9th Cir. 1994). “Settlement agreements are interpreted  
23 according to the principles of contract law.” *Tucker v. Tucker*, 203 F.3d 832, 832  
24 (9th Cir. 1999); *see also Jeff D. v. Andrus*, 899 F.2d 753, 760 (9th Cir. 1989)  
25 (“The construction and enforcement of settlement agreements are governed by  
26 principles of local law which apply to interpretation of contracts generally.”).

27 To form a valid and enforceable contract in Washington, the parties must  
28 objectively manifest their mutual assent to the essential terms. *Yakima Cnty. Fire*

1 *Prot. Dist. No. 12 v. City of Yakima*, 122 Wn.2d 371, 388, 858 P.2d 245 (1993).  
2 Under Washington law, a contract may be established by agreement of counsel  
3 even though the parties contemplated signing a more formal writing in the future.  
4 *Loewi v. Long*, 76 Wn. 480, 484, 136 P. 673 (1913); *Morris v. Maks*, 69 Wn. App.  
5 865, 850 P.2d 1357 (1993). The party asserting the existence of the contract must  
6 show the terms of the contract are stated, agreed upon, and that “the parties  
7 intended a binding agreement prior to the time of the signing and delivery of a  
8 formal contract.” *Plumbing Shop v. Pitts*, 67 Wn.2d 514, 520, 408 P.2d 382  
9 (1965) (quoting *Loewi*, 76 Wn. at 484); *see also Keystone Land & Dev. Co. v.*  
10 *Xerox Corp.*, 353 F.3d 1070, 1073 (9th Cir. 2003). “Equally certain is that if the  
parties intended their legal obligations to be deferred until the execution of the  
formal writing, the preliminary writings and negotiations cannot constitute a  
contract.” *Keystone*, 353 F.3d at 1073 (citing *Plumbing Shop*, 67 Wn.2d at 520-  
21); *see also KVI, Inc. v. Doernbecher*, 24 Wn.2d 943, 967, 167 P.2d 1002 (1946).  
The parties’ intent to enter into a subsequent agreement “is strong evidence to  
show that they do not intend the previous negotiations to amount to any proposal  
or acceptance.” *Pac. Cascade Corp. v. Nimmer*, 25 Wn. App. 552, 556, 608 P.2d  
266 (1980) (quoting *Coleman v. St. Paul & Tacoma Lumber Co.*, 110 Wash. 259,  
272, 188 P. 532 (1920)).

11 When a party moves to enforce the terms of a settlement agreement, that  
12 party bears the burden of “proving that there is no genuine dispute over the  
13 existence and material terms of the agreement.” *Bringerhoff v. Campbell*,  
14 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). The court must view the facts in  
15 the light most favorable to the non-moving party to “determine whether reasonable  
16 minds could reach but one conclusion.” *Id.* at 697. Here, defendant’s counsel  
17 confirmed “[w]e have a deal” after conferring with his client in response to  
18 plaintiffs’ offer. *See* Declaration of Ryan L. McBride, Ex. B, docket no. 36-4  
19 (“Email Correspondence”), at 7. However, that email and subsequent  
20 correspondence reflects an intent to enter into a subsequent agreement and that the  
21 parties would need to review and approve that subsequent agreement. For  
22 example, defendant’s counsel—in the same email in which he stated “[w]e have a  
23 deal”—stated that he “had a question on how [plaintiff] wanted to handle the  
payments.” *Id.* Plaintiffs’ counsel later emailed a draft settlement agreement and  
asked “if [defendants’ counsel had] any redlines.” *Id.* at 12. Plaintiffs’ counsel  
subsequently emailed defendants’ counsel, stating that “you indicated you did not  
have any edits to the settlement agreement I proposed to you and were going to  
run the agreement by your decision maker and get back to me soon . . . .” *Id.* at  
17. Although in some instances the parties may enter an enforceable settlement  
agreement even though they contemplate executing a future, more formal  
agreement, *see, e.g., McKelvey v. Am. Seafoods*, No. C99-2108L, 2000 WL  
33179292, at \*1 (W.D. Wash. Apr. 7, 2000), this is not such a case. Taking the  
facts in the light most favorable to the non-moving party, the email

1 correspondence indicates that although the parties agreed to certain terms of the  
2 settlement, defendants' counsel expressly indicated that he would need to obtain  
3 client approval for the final agreement. The Court finds plaintiffs have failed to  
4 show that the parties "intended a binding agreement prior to the time of the  
5 signing and delivery of a formal contract." *Plumbing Shop*, 67 Wn.2d at 520.  
6 Moreover, Washington law requires "a stipulation in open court on the record, or a  
7 writing acknowledged by the party to be bound" in order to bind a party to a  
8 settlement agreement negotiated by the party's attorney. *Bryant v. Palmer Coking  
9 Coal Co.*, 67 Wn. App. 176, 178 (1992) (citing CR 2A and RCW 2.44.010). The  
10 purpose of this rule is to avoid situations where one party seeks to enforce a  
11 settlement agreement against another party that has not agreed to the settlement  
12 terms. *Id.* at 179.

13 (2) The parties are ORDERED to file a Joint Status Report on or before  
14 August 30, 2019, addressing potential trial dates in October 2019.

15 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of  
16 record.

17 Dated this 2nd day of August, 2019.

18 William M. McCool  
19 Clerk

20 s/Karen Dews  
21 Deputy Clerk